

The Chairman, Michael Hutson, called the meeting of the Board of Zoning Appeals to order at 7:30 P.M., on Tuesday, April 15, 2003.

PRESENT: Kenneth Courtney  
Michael Hutson  
Matthew Kovacs  
Mark Maxwell  
Mark Vleck

ALSO PRESENT: Mark Stimac  
Allan Motzny  
Pam Pasternak

ABSENT: Christopher Fejes  
Marcia Gies

**ITEM #1 – APPROVAL OF MINUTES MEETING OF MARCH 18, 2003**

Motion by Courtney  
Supported by Maxwell

MOVED, to approve the minutes of the meeting of March 18, 2003 as written.

Yeas: 5 – Hutson, Kovacs, Maxwell, Vleck, Courtney  
Absent: 2 – Fejes, Gies

**MOTION TO APPROVE MINUTES OF MARCH 18, 2003 CARRIED**

Mr. Hutson explained that due to scheduling conflicts the date of the meeting for the May 2003 Board of Zoning Appeals meeting would have to be changed.

Motion by Courtney  
Supported by Maxwell

MOVED, to change the date of the next scheduled meeting of the Board of Zoning Appeals from Tuesday, May 20, 2003 to Wednesday, **May 21, 2003.**

Yeas: 5 – Hutson, Kovacs, Maxwell, Vleck, Courtney, Fejes  
Absent: 2 – Gies, Fejes

**MOTION TO MOVE THE NEXT SCHEDULED MEETING OF THE BOARD OF ZONING APPEALS FROM Tuesday, MAY 20, 2003 TO Wednesday, MAY 21, 2003 CARRIED.**

**ITEM #2 – APPROVAL OF ITEMS #3 AND #4**

Motion by Courtney  
Supported by Vleck

**ITEM #2 – con't.**

**RESOLVED**, that items #3 and #4 are hereby approved in accordance with the suggested resolutions printed in the Agenda Explanation.

Yeas: 5 – Hutson, Kovacs, Maxwell, Vleck, Courtney

Absent: 2 – Fejes, Gies

**ITEM #3 – RENEWAL REQUESTED. DENNIS BOSTICK, TROY SPORTS CENTER, 1819 E. BIG BEAVER**, for relief to provide a landscaped berm in place of the 4'-6" high wall required along the north and a portion of the west property line.

Mr. Stimac explained that the petitioner is requesting renewal of relief granted by this Board since 1997 to provide a landscaped berm along the north and a portion of the west property lines in lieu of the 4'-6" high masonry-screening wall. Relief was originally granted based on the fact that the petitioner had demonstrated that conformance was unnecessarily burdensome and the wall would be less attractive than the landscaped berm. The adjacent residential property to the north is vacant and the property to the west is used for the athletic fields for the San Marino Social Club. This item last appeared before this Board at the meeting of April 2000 and was granted a three-year (3) renewal at that time. Recently the depth of the non-residential zoning on the property to the west has been increased such that the wall is only required for the north 50 feet of the west property line. Other than that, conditions remain the same and we have no complaints or objections on file.

**MOVED**, to grant Dennis Bostick, 1819 E. Big Beaver, a three-year (3) renewal of relief to provide landscaped berms along the north and a portion of the west property lines in lieu of the required 4'-6" high masonry screening wall.

- Variance will not cause an adverse effect to surrounding property.
- Conditions remain the same.

**ITEM #4 – RENEWAL REQUESTED. EDWARD KENDZIUK, KMART CORPORATION, 3100 W. BIG BEAVER**, for relief of the masonry screening wall required on the north and east side of the parking lot.

Mr. Stimac explained that the petitioner is requesting renewal of variance granted by this Board for relief of the 4'-6" high masonry wall required where their parking lot abuts residential zoned property. This variance has been granted on a yearly basis since 1998 and last appeared before this Board at the meeting of April 2000. At that time this request was granted a three-year (3) renewal. Conditions remain the same and we have no objections or complaints on file.

**ITEM #4 – con't.**

MOVED, to grant Edward Kendziuk, 3100 W. Big Beaver, a three-year (3) renewal of relief of the 4'-6" high masonry wall required where their parking lot abuts residential zoned property.

- Conditions remain the same.
- Variance is not contrary to public interest.

**ITEM #5 – VARIANCE REQUESTED. EUGENE & BRENDA FERGUSON, 1053**

**HARTWIG**, for relief of the Ordinance to construct a rear sunroom addition resulting in 8.4' from an existing detached garage where 10' is required.

Mr. Stimac explained that the petitioner is requesting relief of the Ordinance to construct a rear sunroom addition. The proposed location as shown on the site plan indicates that the east wall of the addition would be 8.4' from an existing detached garage. Section 40.57.05 requires a minimum distance of 10' from any part of the main building to an accessory structure.

Mr. Ferguson was present and stated that because they have an existing door in this location, this would be the only place they could add the sunroom. Mr. Maxwell asked when this home was built and Mr. Ferguson said that he thought it was in 1948 and over the years he has tried to improve the property.

Mr. Courtney asked if Mr. Ferguson attached a breezeway to connect the garage to this sunroom, if this addition would then be in compliance with the Ordinance. Mr. Stimac stated that it would not meet the requirements of an attached garage because there is only a 1' setback from the east property line. Mr. Stimac explained that they would need an 8' side yard setback, which would allow them to construct a breezeway and make this garage an attached garage.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are five (5) written approvals on file. There are no objections on file.

Motion by Maxwell  
Supported by Kovacs

MOVED, to grant Eugene & Brenda Ferguson, 1053 Hartwig, relief of the Ordinance to construct a rear sunroom addition resulting in 8.4' from an existing detached garage where 10' is required.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Variance applies only to this property.

**ITEM #5 – con't.**

Yeas: 5 – Kovacs, Maxwell, Vleck, Courtney, Hutson

Absent: 2 – Fejes, Gies

**MOTION TO GRANT VARIANCE CARRIED****ITEM #6 – VARIANCE REQUESTED. WILLIAM & ELEANOR LUPSHA, 36**

**VERMONT**, for relief of the front yard setback to maintain an existing enclosed front porch with a 19.35' front yard setback where a 25' front yard is required.

Mr. Stimac explained that the petitioner is requesting relief to maintain an existing enclosed front porch, which was constructed without a building permit. Inspections made at this property revealed that an enclosure had been constructed on an existing open front porch. The mortgage survey indicates that this structure has a 19.35' front yard setback. Section 30.10.06 requires a 25' minimum front setback in the R-1E Zoning District.

Mr. & Mrs. Lupsha were present. Mr. Lupsha explained that they had purchased this home in August of 2002 from Century 21 and were not aware that the enclosed front porch was not in compliance with the Ordinance. Mr. Lupsha also stated that this porch is approximately 18 square feet.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are four (4) written approvals on file. There are no objections on file.

Mr. Kovacs asked how this discrepancy came to light. Mr. Stimac said that the Building Department had done other inspections on the home regarding property maintenance issues with the previous owner, and had noted several deficiencies. At the time the Building Department made inspections on these deficiencies, it was discovered that the porch had been enclosed without first obtaining a Building Permit. Mr. Stimac also indicated that the Assessing Department had done an audit of this property in August 2001 and there was an open porch. Further investigation revealed that a Building Permit was never obtained.

Mr. Hutson asked if the previous owner had been given a ticket. Mr. Stimac said that a ticket was not issued, although the previous owner was made aware that this porch was in compliance.

Mr. Kovacs asked if the City was aware of this condition at the time of the sale of the home. Mr. Stimac explained that the City does not require a point of sale inspection, however, he thought that the previous owner should have indicated this non-compliance on his disclosure form.

**ITEM #6 – con't.**

Mr. Courtney asked if the City could go back to Century 21 and let them know that they sold this home with an existing problem. Mr. Motzny stated that the City would not prosecute Century 21, but that this would be a civil matter, which would be handled between the new owner and Century 21. Mr. Motzny also said that if this was not on the disclosure form, it could be considered a matter of fraud, but again it would be handled as a civil matter.

Motion by Courtney  
Supported by Vleck

MOVED, to grant Mr. & Mrs. William Lupsha, 36 Vermont, relief of the front yard setback to maintain an existing enclosed front porch with a 19.35' front yard setback where a 25' front yard setback is required.

- Variance is not contrary to public interest.
- Variance will not have an adverse effect to surrounding property.
- Absent a variance, compliance would be unnecessarily burdensome.
- Variance applies to this property only.

Yeas: 5 – Maxwell, Vleck, Courtney, Hutson, Kovacs  
Absent: 2 – Fejes, Gies

MOTION TO GRANT VARIANCE CARRIED

**ITEM #7 – VARIANCE REQUESTED. MR. & MRS. GARY SHEREDA, 5231**

**CROWFOOT**, for relief of the rear yard setback to construct a family room addition to the back of their home with a 26.55' rear yard setback where 40' is required.

Mr. Stimac explained that the petitioners are requesting relief of the rear yard setback to construct a family room addition. The site plan submitted indicates that the proposed family room addition would result with a 26.55' rear yard setback. Section 30.10.04 requires a 40' minimum rear yard setback in the R-1C Zoning District.

Mr. & Mrs. Shereda were present. Mrs. Shereda stated that her mother-in-law has moved in with them and suffers from many illnesses, and they feel the need for a room that would be handicap accessible. Mrs. Shereda explained that they plan to include a therapeutic hot tub, which would benefit her osteoarthritis. Mrs. Shereda also explained that they help their 24-year-old nephew, who is paralyzed from the shoulders down due to a diving accident. Mr. Shereda further stated that this addition would blend in with their existing home and they did not believe it would cause an adverse effect to surrounding property.

**ITEM #7 – con't.**

Mr. Courtney said that he could understand all of the reasons given, however, did not see a hardship that runs with the land, which would necessitate a variance. Mrs. Shereda said that she thought the fact that the property was not large enough to construct this addition was the hardship.

Mr. Kovacs asked if the Shereda's knew the zoning requirements when they purchased the property. Mr. Shereda stated that they did not. Mr. Kovacs went on to say that the problem with this subdivision is that all of the homes are 40' from the property line, and the builder used every inch of land that he could to put these homes up. Mr. Kovacs also said that the reason there are regulations in place is to maintain green space between the homes, and although he felt that they have a personal hardship, he did not see a hardship that runs with the land. Mr. Shereda said that their hardship started about a year ago when his mother came to live with them. He stated that their hot tub is on the deck and she has difficulty navigating the stair to the hot tub and he would like to make this all on one floor. Mrs. Shereda said that they really don't want to move, they love Troy and the area they live in.

The Chairman opened the Public Hearing.

Mrs. Patricia Beste, 5230 Saffron was present and stated that her property backs up to the Shereda's property. Mrs. Beste said that they had seen the plans for the addition and knew that there were some physical problems with the people living there. Mr. Beste asked what the dimensions of the addition were and Mr. Stimac said that according to the plans submitted it is 16' out from the back of the house and is 27 ½' wide. Mr. Beste then asked where the easement is located on the property and Mr. Stimac pointed out on the site plan, that it is approximately 6' on Mrs. Beste's property, as well as 6' on Mr. & Mrs. Shereda's property. Mr. Stimac explained that this is a utility easement and is not owned by the City but that the property owners own this property and there exists a "right of entry" on the property to maintain or fix these utilities. Mrs. Beste then asked how far the addition would be from the property line and Mr. Stimac said that from the proposal submitted by the petitioners it would appear that the back edge of the room addition to the property line would be 26 ½'.

Mrs. Beste asked how far out this addition would be from the current patio. Mr. Shereda explained that the cement part of the patio is 17' x 26' with a retaining wall. Mrs. Beste asked if the new addition would be approximately the same depth of the patio and Mr. Shereda stated that it would. Mrs. Beste stated that she feels that this variance request is very large and objects to granting this variance. Mrs. Beste said that one of the reasons they purchased this property was because of the greenery around this home.

No one else wished to be heard and the Public Hearing was closed.

There are three (3) written approvals on file. There are three (3) written objections on file.

**ITEM #7 – con't.**

Mr. Maxwell asked if there were fence restrictions in this area. Mr. Stimac stated that the City would allow a fence up to 6' in height located in the rear yard location; however, there could be deed restrictions, which are placed on the property by the homeowner's association. Mr. Maxwell expressed concern that with the variance this home would be too close to the property behind them, and suggested that the petitioners explore the possibility of reducing the size of their request.

Mr. Kovacs advised the petitioners that there are two things which the Board looks at before they grant a variance: The first is that the variance is not contrary to public interest and secondly that a variance would not have an adverse effect to surrounding property. Mr. Kovacs also stated that he feels that this is a very large request.

Motion by Vleck  
Supported by Maxwell

MOVED, to postpone the request of Mr. & Mrs. Gary Shereda, 5231 Crowfoot, for relief of the rear yard setback to construct a family room addition to the back of their home, which would result in a 26.55' rear yard setback where 40' is required, until the next meeting of May 21, 2003.

- Tabling will allow the petitioner to explore the possibility of requesting a smaller variance.
- To give the petitioner the benefit of a full board.

Yeas: 5 – Vleck, Courtney, Hutson, Kovacs, Maxwell  
Absent: 2 – Fejes Gies

MOVED TO POSTPONE THIS REQUEST UNTIL THE MEETING OF MAY 21, 2003  
CARRIED

**ITEM #8 – VARIANCE REQUESTED. MR. & MRS. CHARLES NOONAN, 795 RANDALL,** for relief of the front yard setback to construct a two-story addition with a 25' front yard setback where 30' is required.

Mr. Stimac explained that the petitioners are requesting relief of the front yard setback to construct a two-story addition to their home. The site plan submitted indicates a garage expansion and a second floor addition with a proposed 25' front yard setback. Section 30.10.04 requires a 30' minimum front yard setback in the R-1C Zoning District.

Mr. & Mrs. Noonan were present and Mr. Noonan stated that their home does not have a basement and with a growing family they need the extra room for storage. Mr. Noonan also said that as part of his job, he has a truck, which he has to bring home and it will not fit in the garage and the addition will allow him to park the truck in the garage.

**ITEM #8 – con't.**

Mr. Noonan said that they had explored the possibility of putting an addition in the back but they have a pool located there and an addition would not fit in this area.

The Chairman opened the Public Hearing. No one wished to be heard and the Public Hearing was closed.

There are six (6) written approvals on file. There is one (1) written objection on file.

Mr. Kovacs asked the petitioner if his vehicle was stored outside. Mr. Noonan said that he drives this truck to work every day, and unless he takes the ladders off the top of the truck it will not fit into his existing garage.

Mr. Courtney asked what kind of business Mr. Noonan was in. Mr. Noonan stated that he is in the roofing business and also indicated that he is a volunteer firefighter for the City and this is the vehicle he uses to respond to fires and this vehicle has to stay with him.

Mr. Hutson asked Mr. Noonan if he removes the ladders when he responds to fires and Mr. Noonan stated that he leaves the ladders on.

Mr. Kovacs asked if the pool was not in the yard, how far the petitioner could develop his property in the back. Mr. Stimac stated that the rear yard setback is 40' and believes that the existing house is 65' back, which would allow a 25' addition. Mr. Noonan stated that when they bought the house they didn't want the pool, but after talking to City personnel about removing the pool found that it would be cost prohibitive, due to the fact that the cement would have to be removed.

Mr. Maxwell asked if it was possible to put on an addition at the back of the house. Mr. Noonan indicated that the addition would be too close to the pool. Mr. Maxwell asked if they would need a variance and Mr. Stimac indicated that officially there is not a setback requirement from a structure to a pool; however the City does recommend that a pool be at least 10' from any structure, to discourage it from being used as a diving platform to the pool.

Motion by Kovacs  
Supported by Vleck



**ITEM #8 – con't.**

MOVED, to grant Mr. & Mrs. Charles Noonan, 795 Randall, relief of the front yard setback to construct a two-story addition with a 25' front yard setback where 30' is required.

- Absent a variance, the public health, welfare and safety would be negatively affected.
- Variance is not contrary to public interest.
- Variance does not establish a prohibited use in a Zoning District.

Yeas: 5 – Courtney, Hutson, Kovacs, Maxwell, Vleck

Absent: 2 – Fejes, Gies

MOTION TO GRANT VARIANCE CARRIED

The Board of Zoning Appeals meeting adjourned at 8:19 P.M.

MS/pp